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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,386	05/03/2006	Helmut Jerg	2003P01287WOUS	1892

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BSH HOME APPLIANCES CORPORATION  
INTELLECTUAL PROPERTY DEPARTMENT  
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EXAMINER
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RIGGLEMAN, JASON PAUL

ART UNIT	PAPER NUMBER
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1792

NOTIFICATION DATE	DELIVERY MODE
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10/20/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

NBN-IntelProp@bshg.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/578,386	<b>Applicant(s)</b> JERG ET AL.	
	<b>Examiner</b> JASON P. RIGGLEMAN	<b>Art Unit</b> 1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)                  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application        |
| Paper No(s)/Mail Date _____  | 6) <input checked="" type="checkbox"/> Other: <u>Foreign reference</u> . |

## **DETAILED ACTION**

### ***Status of Claims***

1. Applicant's reply, filed 7/16/2009, has been received. Current pending claims are 11-21. No claims are amended. Claims 1-10 are cancelled. Claim 21 is new.

### ***Response to Arguments***

2. Applicant's arguments filed 7/16/2009 have been fully considered. The 112, first paragraph, rejection of claim 12 is withdrawn and replaced with the proper objection. Examiner considers these not to be two different modes but instead a two types of descriptions of the same motion. In regards to the 112, 2nd paragraph, rejection of claims 11, 13, and 20, the rejections are maintained. In regards to claim 11, the applicant cites pg. 7, lines 27-32; however, this does not clarify "pressurized manner". Further, it should be noted that a 2nd distributor is not in claim 11 and is an alternative embodiment. In claim 20, the applicant has referred to a verbatim quotation of the claim in the specification to argue that the claim is no indefinite. In claim 13, the applicant merely asserts that it is not indefinite. To say a "pressurized rinsing liquid" is as indefinite as saying a "pressurized manner". In regards to the 102(b) rejection, the applicant argues that Lutolf "does not teach at least one distributor for regulating the supply of rinsing liquid to the at least one spray channel. Applicant argues that the check valves 60, 80, of Lutolf do not regulate the supply of rinsing liquid to the pipe system 3 and instead "restrict flow back from the pipe system toward the pipes 55 and 77". Examiner disagrees. Even if the valves are merely check valves they still regulate the supply of rinsing liquid; therefore, the rejections are maintained on these grounds. The applicant argues with the motivation with the 103 (a) rejections by stating that it would not be obvious to one of ordinary skill in the art to create an

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alternating spray pattern. Examiner points to Deuser et al. (UK Patent Application Publication No. 2003840) which illustrates the pervasive use and motivation for alternating spray patterns – in particular for washing 3-D objects such as containers. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

3. The specification objection and drawing objections are withdrawn in view of the amendments.

### ***Claim Objections***

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the selection of one of a movement and a to-and-fro motion in claim 12 is not supported by the specification. Therefore, this limitation should be incorporated into the specification.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 11 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant

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regards as the invention. The phrase "and having two open ends via which rinsing liquid can be supplied in a pressurized manner" is not understood. The phrase "is one of a plurality of spray channels that are aligned parallel to one another at least on the bottom of the rinsing container" is not understood.

7. The term "pressurized manner" in claim 13 is a relative term which renders the claim indefinite. The term "pressurized manner" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Note: the applicant appears to be calling a plate-type valve feeding a manifold a -- "distributor".

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 11, 14-15, 18-19, and 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Lutolf (FR2285838).

9. Lutolf teaches a dishwasher having a spray device including two spray channels (3) and distributors (80) (60) feeding the spray channels (3). The spray channels, which are parallel, has two open ends which rinsing liquid can be supplied in pressurized manner, see Figure. The pressure is variable -- by means of the distributors. The rinsing container is trough-shaped. The distributor has one opening in which liquid can be supplied in a pressurized manner via an open end of the spray channel in a predetermined position of the distributor. The one distributor is at the first open end of the spray channel and the second distributor is at the second end of the spray channel. The first and second distributor cooperate to regulate a quantity of rinsing liquid supplied to the spray channel and a pressure of the rinsing liquid in parts of the spray channel.

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The openings are necessarily configured over a predetermined arc segment on the side of the tubular member towards the chamber.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 12-13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lutolf (FR2285838) as applied to claim 11 above, and further in view of Bolla (CH571852).

12. Lutolf does not teach the to-and-fro movement of the distributor in alternating directions and the drive means; however, Bolla teaches a distributor (8) which is movable related to the spray channel in a displacement movement, Figs. 1-2. There is a drive means for driving the distributor in periodic movement. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Lutolf with Bolla to create a dishwashing machine with an alternating spray pattern to achieve the expected result.

13. 12-13 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lutolf (FR2285838) as applied to claim 11 above, and further in view of Perry (US Patent No. 6003529).

14. Lutolf does not teach the to-and-fro movement of the distributor in alternating directions and the drive means ; however, Perry teaches a distributor (valve 40) which is movable related to the spray channel in a displacement movement, Fig. 2. There is a drive means for driving the distributor in periodic movement. It would have been obvious to one of ordinary skill in the art

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at the time of the invention to modify Lutolf with Perry to create a dishwashing machine with an alternating spray pattern to achieve the expected result.

15. Lutolf, as modified by Perry, above, does not teach the drive slot/rotary disk/cam. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Lutolf, as modified by Perry, above, to create a horizontally movable plate-valve which has conventional means to move it periodically throughout the washing cycle to affect the pressure and spray to achieve the expected result.

***Conclusion***

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON P. RIGGLEMAN whose telephone number is (571)272-5935. The examiner can normally be reached on M-F, 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on 571-272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Kornakov/  
Supervisory Patent Examiner, Art Unit 1792

Jason P Riggleman  
Examiner  
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